TL 1062

2. ASA 21/WU 02/93 EXTERNAL
21 May 1993

EAST TIMOR: XANANA TRIAL A TRAVESTY OF JUSTICE

Xanana Gusmão, the East Timorese resistance leader, was sentenced to life-imprisonment today (21 May 1993) after a blatantly unfair trial. The District Court of Dili found him guilty of rebellion and illegal possession of firearms. Amnesty International deplored the outcome but said it came as no surprise since a guilty verdict is a foregone conclusion in political trials in Indonesia and East Timor.

In view of the fact that Indonesia's sovereignty over East Timor has not been recognized by the United Nations, the competence of Indonesian courts to try Xanana Gusmão, and other East Timorese, is open to question. It is especially doubtful whether an East Timorese can legitimately be charged with rebellion against the Government of Indonesia which occupies the territory illegally. Nevertheless, Amnesty International believes that, when such trials do take place, every effort must be made to ensure that they comply fully with international standards of fairness.

Following strong international criticism of its appalling human rights record in East Timor, the Indonesian Government made an unusual effort to make Xanana Gusmão's trial appear both open and fair. Selected foreign journalists, diplomats and some international human rights organizations - not including Amnesty International - were permitted to attend as observers. However, like all political trials in East Timor and Indonesia, this one failed to meet international standards of fairness, or even to comply with Indonesia's own Code of Criminal Procedure.

Even before proceedings began on 1 February, practices highly prejudicial to a fair trial were already evident. After his capture on 20 November 1992, Xanana Gusmão was held in secret military custody for 17 days before the International Committee of the Red Cross (ICRC) representatives were permitted to see him. Apart from being unlawful, this prolonged period of incommunicado detention gave rise to fears that he may have been psychologically or physically ill-treated. Such fears were heightened by the fact that, in violation of both domestic and international standards, he was denied access to a lawyer while under interrogation. There were also doubts about whether he had been free to appoint legal counsel of his choice as required by Indonesian law. Lawyers from the Indonesian Legal Aid Institute (LBH) were not permitted to visit him, despite having been given power of attorney by his relatives. A defence lawyer was finally appointed on 26 January 1993 just six days before the trial began, but doubts remain over the circumstances of his appointment and about his motivation for accepting the case.

The trial itself was also marked by the violation of basic international and domestic standards. Prosecution witnesses, many of whom were themselves political detainees, appear to have been subjected to undue pressure from military authorities, making their testimony unreliable. Some

who refused to comply were reportedly subjected to intimidation and sanctions. One witness, Saturnino da Costa Belo, who unexpectedly shouted "Long Live East Timor!" was hustled out of the court-room, placed in an isolation cell and declared unfit to testify. A legitimate fear of official reprisals also ensured that few witnesses could be found to testify for the defence. In some respects, the defence case also appeared to have been inadequately prepared. A further problem was that neither Xanana Gusmão nor many of the witnesses were fluent in Indonesian, the language used in the court, while translation services provided were neither complete nor accurate. Perhaps the most blatant contravention of fair trial standards came in one of the final sessions when Xanana Gusmão was due to read his final defence plea. After he had read two pages of a 29-page statement, the presiding judge ordered him to stop, claiming that his remarks were "irrelevant".

In addition to these procedural concerns, Amnesty International believes that the general political atmosphere within which the trial took place - one of undisguised official hostility to the defendant, and repeated interference in the judicial proceedings by military and executive authorities - made a fair trial virtually impossible.

The trial of Xanana Gusmão has justly attracted widespread international attention. But it is hardly unique. With this verdict, Xanana Gusmão joins thousands of political prisoners sentenced in blatantly unfair trials in East Timor and Indonesia since the New Order government of President Suharto came to power in the mid 1960s. Virtually unnoticed by the international community, similar political trials continue today in the province of Aceh, where government forces have conducted a brutal counter-insurgency campaign since 1989. And despite government claims that the human rights situation in East Timor has improved in the past year, serious violations continue to occur while past violations remain unresolved. Scores of East Timorese arrested for their non-violent pro-independence activities in the past two years remain in custody, some of them not yet charged, others serving sentences up to life imprisonment. Meanwhile, the fate of more that 200 people who "disappeared" after the Santa Cruz Massacre in November 1991 remains unresolved.